

ORDINANCE NO. 2289

**ORDINANCE AUTHORIZING THE CITY OF PEKIN TO FILE
A PETITION WITH THE ILLINOIS COMMERCE COMMISSION
REQUESTING APPROVAL TO COMMENCE EMINENT DOMAIN PROCEEDINGS
AGAINST ILLINOIS AMERICAN WATER COMPANY**

WHEREAS, the City of Pekin is a municipal corporation, duly incorporated and acting pursuant to the terms of 65 ILCS 5/1-1-1, *et seq.*; and

WHEREAS, the City of Pekin is a home rule municipality as described in Section 6(a), Article VII of the 1970 Constitution of the State of Illinois, and as such may exercise any power and function pertaining to its government and affairs;

WHEREAS, Illinois American Water Company is a public utility subject to the jurisdiction of the Illinois Commerce Commission owning and operating a waterworks plant and property relating to the operation of a waterworks plant serving the citizens of the City of Pekin and the surrounding area (the "Waterworks"), as well as other areas within the State of Illinois; and

WHEREAS, pursuant to Division 130 of Article 11 of the Municipal Code (65 ILCS 5/11-130-1, *et seq.*) the City of Pekin is authorized to purchase or construct waterworks or construct improvements to its waterworks and, pursuant to 65 ILCS 5/11-130-9, has the right of eminent domain for the purpose of purchasing any waterworks; and

WHEREAS, the City of Pekin has attempted in good faith, but without success, to negotiate with Illinois American Water Company the purchase of the Waterworks; and

WHEREAS, on March 19, 2002, in an advisory referendum put before the citizens of the City of Pekin, the citizens of the City of Pekin voted in favor of the City of Pekin's acquisition of the Waterworks; and

WHEREAS, pursuant to the terms of 735 ILCS 5/7-102 and Illinois case law, approval of the Illinois Commerce Commission is required prior to the institution of eminent domain proceedings to acquire the Waterworks; and

WHEREAS, the City Council of the City of Pekin finds that the acquisition of the Waterworks is in the best interests of the City of Pekin and will promote the health, safety, and welfare of the City of Pekin.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEKIN, ILLINOIS:

SECTION 1: The above recitals are incorporated herein and made a part hereof.

SECTION 2: That the City of Pekin petition the Illinois Commerce Commission for prior approval of the purchase and acquisition, including, if necessary, use of eminent domain, of the waterworks and related properties of Illinois American Company now utilized in the furnishing of water service to the residents of the City of Pekin and surrounding area.

SECTION 3: That Corporation Counsel is authorized to prepare and file such documents as may be necessary to petition the Illinois Commerce Commission for such approval, and the City Manager is hereby authorized to execute, deliver and perform such documents.

SECTION 4: That, in the event that the City of Pekin obtains such approval from the Illinois Commerce Commission, then the City of Pekin shall proceed with the purchase and acquisition, including, if necessary, use of eminent domain, of the waterworks and related properties of Illinois American Company now utilized in the furnishing of water service to the residents of the City of Pekin and surrounding area.

SECTION 5: That the City Manager and other City officers are hereby authorized to take such action as is necessary to proceed with such purchase and acquisition.

BE IT FURTHER ORDAINED that all Ordinances or parts of ordinances in conflict herewith are hereby repealed.

BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon its passage, approval, and publication as may be required by law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of
Pekin, this 25 day of MARCH, 2002; and upon roll call the vote was as
follows:

AYES:	<u>5</u>
NAYS:	<u>0</u>
ABSENT:	<u>0</u>
ABSTAINING:	<u>0</u>

APPROVED this 25 day of MARCH, 2002.


MAYOR

ATTEST:


CITY CLERK

AFFIDAVIT

STATE OF ILLINOIS)
) S.S.
COUNTY OF TAZEWELL)

Now comes DENNIS KIEF, and after being first duly sworn, on oath, states as follows:

1. I am 50 years old and an Illinois licensed engineer, with an engineering degree from the University of Wisconsin. I am the city engineer of the City of Pekin and have acted in that capacity for 18 years. As such, I have been intimately involved in the operation and oversight of the City's water systems during my tenure with the City.
2. The City has operated the waste water treatment system since 1939 when the original facilities were constructed.

The water system, currently operated by Illinois American, was under local private ownership until 1981. It is a straight forward and relatively simple system, requiring minimal treatment, as the City sits on an extensive aquifer, with high quality water at very reasonable depths. There is only a minimal need for treatment, and the system is essentially a pumping, storage and distribution system.

3. In 1990 and 1991, the City Council, recognizing the City's limitations in dealing with ever increasing obligations with respect to waste water treatment, made a decision to bring in a professional contractor to operate that system. In 199, I prepared the necessary request for proposals that went out to potential contract operators of the waste water system, when the City Council decided to seek requests for proposals from outside companies to operate its waste water system. A copy of the waste water request for proposals, indicating the specific needs and overall design

of the system, is attached hereto as Exhibit 1. I was also intimately related in the selection process by the City Council at that time.


4. The City Council chose a contract operator; and the waste water system, under supervision of the engineering department of the City, has been operated since 1993 by United Water, utilizing a combination of current City employees and former City employees who became employees of United Water on the Pekin system.
5. In 1996, the City became a major player in protecting the city water supply. The Illinois EPA prepared a needs assessment regarding the wells that serve the City of Pekin. The EPA selected Pekin because of our potentially vulnerable water supply. The wells are approximately 100 feet deep and our soils are very sandy. That combination could make our wells susceptible to contamination. The City Council relied on City staff's recommendations, including an innovative ground water protection ordinance used to control development in the recharge areas for the well. Our program has been acknowledged nationally.
6. As with the water delivery system, the City has been subject to and has been in compliance with U.S. and Illinois EPA regulations for years. We are experienced in all areas in meeting and exceeding U.S. and Illinois EPA requirements, and planning for the future with respect to continued safety of the system, through that compliance.
7. As an integral part of the safety and regulatory aspects of the waste water treatment system, we have an excellent knowledge of regulatory requirements, including reporting; and we have developed an excellent ongoing relationship with the regulatory agencies with oversight over the system.

8. The City of Pekin has proven an outstanding track record of efficiently operating the waste water collection and treatment system, and we have expanded and extended the system by adding at least five miles of trunk lines and upgraded all lift stations, to meet the increasing needs of Pekin citizens.
9. Since 1992, under overall City supervision and management, we have been able to decrease rates for the average customer by 23%, while at the same time upgrading and improving the system and extending it to areas of need and growth areas.
10. The City's plan is to enter into a similar contract operation of the water system, with an operator that would, as we have done with the waste water treatment system, work in close cooperation with City staff with the same goals in mind. We would expect, through that operation, to be able to make significant and necessary upgrades in the system, continue to work with regulatory agencies, including the U.S. and Illinois EPA, for the purposes of creating a water supply system that rivals, in efficiency, safety, and a vision for the system, that of the waste water treatment system.
11. The current contract with the contract operator for the waste water facilities expires in 2003, as it was a ten year contract, and we are at the initial stages of considering request for proposals data, so that the contract operator could manage both the water delivery and the waste water system, under a single contract, with detailed and intimate City of Pekin input and supervision, that will deliver superior service at a lower total cost.
12. The City of Pekin conducts monthly coordination meetings with all of the utilities in the city, for purposes of coordinating activity in the city, and has done so for a number of years.

13. Laboratory services necessary for the water system are available and existing, and have been utilized by the City in connection with its supervision and operation of the waste water treatment system. Such facilities are similar.
14. Because of its operation of the waste water treatment system, both by itself and with a contract operator, the City is very familiar with the necessary procedures for billing and collection.
15. The City has a risk management officer, as does the waste water contractor, and it is anticipated that office and clerical employees, as well as customer service, would be City employees, upon acquisition of the water system, and not with the contract operator.


Illinois law governs issues of workplace standards, employee recission procedures, and overall employer / employee relationships. Continued conformance to all applicable State and Federal regulations with regard to employer / employee relations would continue, as would the application of such requirements and regulations on contract operators doing business with the City. (See e.g. RFP)
16. The City's abilities, including technical expertise, knowledge of regulations and reporting, relationships with enforcement agencies, cooperation with contract operations, overall management supervision, and safety have been demonstrated during the extensive period of time they have been in charge of, or closely cooperating with the contract operator on the waste water contract system.
17. We would anticipate similar input and similar results should the City acquire the water system from Illinois American.

Further, affiant sayeth not.


DENNIS KIEF

SUBSCRIBED AND SWORN TO before me this 8 day of May,
2002.




Notary Public